

**Before the
Federal Communication Commission
Washington, D.C. 20554**

IN THE MATTER OF

High-Cost Universal Service Support) WC Docket No. 05-337
)
Federal -State Joint Board on Universal Service) CC Docket No. 96-45
)
Lifeline and Link-Up) WC Docket No. 03-109
)
Universal Service Contribution Methodology) WC Docket No. 06-122
)
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996)
) CC Docket No. 96-98
)
Developing a Unified Intercarrier Compensation Regime)
) CC Docket No. 01-92
)
Intercarrier Compensation for ISP-Bound Traffic) CC Docket No. 99-68
)
IP-Enabled Services) WC Docket No. 04-36

**Reply Comments Of
The North Carolina Telephone Cooperative Coalition**

The North Carolina Telephone Cooperative Coalition, Inc. (hereinafter "CarolinaLink")¹ hereby submits its reply comments in response to the Further Notice of Proposed Rule making ("FNPRM") released by the Federal Communications Commission ("FCC") on November 5, 2008, addressing intercarrier compensation and the universal service program. CarolinaLink applauds the Commission for addressing these important issues.

CarolinaLink supports many of the Comments of both the National Telecommunications Cooperative Association ("NTCA") and the National Exchange Carrier Association ("NECA"). Specifically, CarolinaLink supports elimination of the identical support rule for competitive eligible telecommunications carriers ("CETC's") and clarification that, when it utilizes the Public Switched Telephone Network (PSTN), interconnected Voice

¹ CarolinaLink consists of the following North Carolina Telephone Membership Corporations: Atlantic Telephone Membership Corporation, Piedmont Telephone Membership Corporation, Randolph Telephone Membership Corporation, Skyline Telephone Membership Corporation, Star Telephone Membership Corporation, Surry Telephone Membership Corporation, Tri-County Telephone Membership Corporation, Wilkes Telecommunications, and Yadkin Valley Telephone Membership Corporation

over Internet Protocol (“VoIP”) traffic is subject to existing intercarrier compensation requirements. Further, CarolinaLink favors rules to address phantom traffic and access avoidance and does not oppose moving state access rates to interstate rate levels with an appropriate restructure mechanism for rate-of-return carriers and that any Subscriber Line Charge (“SLC”) increases be tied to an appropriate federal benchmark rate transitioning intercarrier compensation. Finally, Universal Service Funds (“USF”) should be available for the deployment of broadband, and Commission should reaffirm that small, rural ILECs are not obligated to transport traffic beyond their network.

ELIMINATE THE IDENTICAL SUPPORT RULE

CarolinaLink agrees with the majority of comments filed that support elimination of the identical support rule. All carriers who receive universal service support should do so based on their own costs, not the cost of the incumbent. Costs incurred by ILECs and CETCs in providing service are not identical. The network and platform infrastructure utilized by different companies carry different costs. Equity demands that each carrier should demonstrate its costs in order to receive universal service funds. The compensating of CETCs in excess of their actual costs results in an unnecessary financial windfall that artificially inflates universal service funding requirements. It simply makes no sense to compensate CETCs in excess of their underlying costs, particularly in view of the fact that CETCs do not have the traditional regulatory obligations of ILECS.

UNIFICATION OF ACCESS RATES AND NEED FOR RESTRUCTURE MECHANISM FOR RATE OF RETURN CARRIERS

The Commission should promote a reasonable transition of intrastate access rates to interstate access rate levels by increasing the maximum allowable federal subscriber line charges and implementing a federal restructure mechanism that allows rate of return companies to recover revenue reductions caused by the transition. Interstate rates have been reduced over time by shifting a portion of the cost recovery to consumers in the form of subscriber line charges and the remainder to the federal universal service fund. The reduction of intrastate access charges should be recovered in a similar fashion using an appropriate restructure mechanism. This mechanism would apply when the combined local, state and federal monthly charges exceed a national benchmark of twenty dollars.²

The declaration of a federal benchmark would prevent overburdening the federal funding of the restructure mechanism by insuring that carriers recover lost access charge revenue directly from end users until the total monthly charges reach the benchmark level. Additional revenue losses due to the reduction of intrastate access rates should be recovered through a restructure mechanism that maintains the authorized rate of return. If these revenue losses are not recovered, carriers will not be able to finance the continued investment in infrastructure required to make telecommunications services available to all consumers. Implementation of a federal benchmark would insure that all consumers share an equal burden of the costs. Furthermore, the declaration of a federal

² NTCA initial comments, November 26, 2008.

benchmark and restructure mechanism would allow states to begin the process of transitioning intrastate access rates to interstate rate levels.

CarolinaLink supports the reasonable transitioning intrastate access rates to interstate levels. A rebalancing of intrastate access rates to present interstate access rate levels would bring them more in line with the cost of providing the service. Assuming that the cost to provide intrastate access service is comparable to the cost to provide interstate access service, the new intrastate rate level would be supported by the output of cost studies³ currently produced annually, in compliance with FCC separation and access rules. This would eliminate the added costs and administrative burdens of developing and reviewing intrastate cost studies.

In addition to a more accurate reflection of cost causation, parity between interstate and intrastate access rate levels will reduce costs to payers and payees throughout the industry by reducing jurisdictional billing disputes. Currently, substantial resources are required in efforts to determine the accurate jurisdiction of calls for billing purposes. Other commentators have devoted extensive space to justify switching costs near zero using a new additional cost methodology. AT&T provided a plan during ex parte presentations that focused on transition to a switching cost of \$.0007 per minute for all carriers⁴. Even if rates for companies serving high density areas should be near zero, a rate significantly higher than that amount is more appropriate in areas where large economies of scale do not exist. One size simply does not fit all companies. Using cost studies in compliance with FCC separations and access rules, NECA has never produced local switching rates as low as the \$.0007 recommended by AT&T. At the same time, if the rate proposed by AT&T is adopted, it would undermine the ability to offset revenue losses and give the carriers a reasonable opportunity to achieve their authorized rate of return.

Rate of return regulation was introduced in the telephone industry as the means to both facilitate investment and control consumer prices in a monopoly environment. The majority of people in the United States are no longer served by rate of return companies. These companies have negotiated an alternative form of regulation based on factors other than rate of return. However, in study areas where high potential for sufficient financial returns do not exist, rate of return regulation is still necessary to assure adequate investment and to insure that all consumers can obtain services similar to those available in metropolitan areas.

Rate of return regulation should provide two basic public benefits: 1) it should encourage investment by giving a company the opportunity to earn a reasonable return on its investment and 2) it should minimize the chance of excessive earnings. The first benefit has been achieved according to the FCC's most recent survey,⁵ which identifies that basic telephone penetration was more than ninety-four percent as of December 31, 2006. The

³ Interstate cost studies for rate of return rural carriers are reviewed annually by NECA for compliance with FCC separations and access rules and use in annual tariff filings.

⁴ AT&T ICC reform proposal July 17, 2008

⁵ Trends in Telephone Service from the Industry Analysis and Technology Division of the Wireline Competition Bureau August 2008.

second benefit has been accomplished through the annual interstate cost study submission and the tariff rate approval process.

VOIP TRAFFIC IS NOT AN INFORMATION SERVICE AND IS SUBJECT TO EXISTING INTERCARRIER COMPENSATION RULES

The Commission should confirm that interconnected VoIP calls that utilize the PSTN are subject to the same intercarrier compensation obligations as all other voice traffic. Voice traffic, regardless of the technology used to transmit it, is still voice traffic and should be treated as such.

If the Commission were arbitrarily to promote one technology over another, it would be creating an imbalanced competitive environment by granting special status to a technology that accomplishes the same function as the existing technology. VoIP service is primarily configured to permit end users to place ordinary voice calls from one telephone to another. The services are functionally equivalent and consumers consider them indistinguishable from circuit switched calls. CarolinaLink strongly suggests that consumer demand and the marketplace, not the Commission, should determine which technology would prevail in the creation and delivery of voice traffic.

It is nonsensical that the Commission proposes to classify all IP/PSTN traffic as "information services." This conclusion, if adopted, would seemingly permit service providers to claim their traffic is exempt from access charges under the "ESP exemption." Thus, it would be unclear whether interconnected interexchange VoIP calls, which use the network in exactly the same way as traditional long-distance telephone calls, will be required to pay access charges, reciprocal compensation charges, or no charges at all. In addition, such a decision will encourage carriers to change the technology currently utilized to insert IP platforms into calls that originate or terminate onto the PSTN, just to avoid access charges. Companies should be encouraged to utilize the most cost effective technology but technology decisions should not be made simply to avoid the payment of access charges. A voice call is a voice call no matter how it is created or delivered. This straightforward finding would put an end to the constant disputes plaguing the industry over access charge bills for interexchange calls, and resolve a principal cause of uneconomic rate arbitrage. Contrary to claims by interconnected VoIP providers, this finding would not "stifle innovation" but would simply mean all voice service providers would compete on a level playing field.

PHANTOM TRAFFIC

Phantom Traffic is the practice of altering or eliminating call identification information so that a carrier can utilize another carrier's network without paying for its use. It not

only deprives Incumbent Local Exchange Carriers (ILECs) of their right to be compensated for building an efficient, cost effective network infrastructure, it also encourages subscribers to leave the ILEC for other carriers who offer the same services at a lower cost. This lower cost is in large measure achieved by avoiding payment for the use of another carrier's network.

Identifying the specific carrier engaged in Phantom Traffic is extremely difficult and prohibitively expensive to many smaller carriers. Associating a group of phantom traffic calls with a single carrier using a common network facility requires a significant investment in equipment and manpower. Even if the company engaged in Phantom Traffic is identified, little recourse is available for the small and rural ILEC to be compensated. Current legal remedies are often prohibitively expensive. The high cost of litigation or arbitration against offending providers not only discourages legal action for small ILECs but it encourages others to engage in similar conduct.

CarolinaLink urges the Commission to modify its rules to require all service providers to populate Calling Party Number (CPN) and Jurisdictional Information Parameter (JIP) information in the SS7 call signaling stream, and to prohibit them from stripping or altering this information. The Commission should also expand the scope of its existing rules, which currently apply only to service providers using SS7 and only to interstate traffic, to all traffic originating or terminating on the PSTN.

The Commission is also urged to clarify that only the Charge Number (CN) (i.e., the number to be billed for the call) can be used to populate the CN field, consistent with industry standards and associated with the geographic origin of the originating call. Consumers, interconnected carriers, emergency service providers, and law enforcement officials share a common interest in the accuracy of this data. The Commission, when writing new rules, should also make clear that CPN transmitted in the signal must reflect the true 10-digit telephone number of the individual end-user customer originating the call, and not a number associated with intermediate switches or gateways used to access the PSTN.

CarolinaLink also asks the Commission to establish payment arrangements for service providers who send traffic lacking the information required or who do not otherwise provide required billing information to the terminating carrier. In these instances, the Commission should require intermediate service providers to pay the terminating service provider's highest termination rate in effect at the time the traffic is delivered to the terminating service provider. Fines should also be imposed for violators. The Commission should apply these new rules not only to a provider who strips or alters traffic signaling but to any provider that is not taking steps to ensure that traffic carried on its network is properly labeled and identifiable. To reduce the expense of legal recourse, the Commission should grant State Commission's the authority to settle disputes between carriers.

These new rules will greatly assist rural carriers in billing and collecting lawful termination charges for traffic heretofore terminated essentially free-of-charge. The Commission can also help resolve billing disputes by confirming carriers may apply the “telephone numbers rule” proposed in NECA’s *Petition for Interim Order*.

BROADBAND DEPLOYMENT

CarolinaLink commends the desire of the Commission to ensure broadband deployment to all citizens in a timely manner, including rural, insular, and high cost areas.

First, the Commission must recognize the high cost of deploying broadband networks, especially in rural areas. Rural carriers have high transport costs to the Internet backbone. The problem only increases as consumers demand more bandwidth. Today’s pricing structure for interconnection of broadband packet networks requires small rural carriers to pay large carriers to interconnect to the IP backbone. In any reform proposal, the Commission, consistent with the NTCA’s comments⁶, should ensure that rural carriers can purchase special access to the Internet backbone at cost based rates.

Another issue with ubiquitous deployment of broadband is the decision by many state commissions to terminate rural carriers exemption granted them under §251(f)(1) in order to allow cable companies to compete in rural areas. Generally, cable companies only provide service in the more densely populated parts of service territories of rural companies. This selective deployment makes it extremely difficult for rural companies to deploy or upgrade facilities in the portions of their service areas that are less populated. Consumers living in the rural areas of this country, as Congress intended, should not be adversely affected by competitive entry that allows new entrants to choose only the easiest to serve and most profitable customers of rural telephone companies. Such a policy works to the detriment of those small ILECs and their customers that are left without competitive choice. The benefits of competition are minimized and the ILEC’s remaining customers are harmed due to increased costs that result from such situations. This situation makes it difficult for small carriers to invest in deploying or upgrading broadband infrastructure in the more rural parts of its service area.

In addition, CarolinaLink agrees with most of the comments, which suggest that using reverse auctions to promote broadband deployment will have the opposite effect. Use of reverse auctions will tend to stifle broadband deployment since carriers would no longer be ensured of cost recovery needed to obtain loans to fund deployment of broadband infrastructure.

TRANSPORT OBLIGATIONS

CarolinaLink asks the Commission to reaffirm that rural local exchange carriers are not now, nor have they ever been, required to transport local traffic beyond their networks. Many CLECs and wireless providers have attempted to use perceived ambiguities in Commission orders and rules to claim they have the sole choice of how to interconnect

⁶ NTCA Comments, CC Docket No. 01-92 (November 26, 2008) pp.38-39

with ILECs. Such a conclusion is not reasonable. These entities believe that rural ILECs should be required to interconnect with them anywhere within the LATA or, in the case of CMRS providers, anywhere within the MTA and that the ILEC should bear all the costs of that decision.

Many competitive carriers choose to interconnect with rural ILECs indirectly. Contrary to the position taken by many competitive providers, the rural ILEC's responsibility is to deliver traffic subject to Section 251(b)(5) to and from an Interconnection Point **on its network** without charge to the competitive provider. Whether the competitive provider is connected to that point directly with its own facilities or indirectly using some other carrier's facilities does not change this framework. Accordingly, the competitive provider is responsible for any charges that a transit provider may impose to carry traffic between the Interconnection Point and the competitive provider's switch, just as the competitive provider would be responsible for construction and maintenance of its own facilities to transport traffic between the Interconnection Point and its switch.

Small rural carriers are at a substantial disadvantage negotiating agreements, especially with larger, national carriers. Many of these larger carriers either refuse to negotiate or make the cost of negotiating and arbitrating an agreement so expensive that the process becomes unworkable for many rural carriers. Wireless carriers, in particular, often take the position that absent an agreement, traffic is exchanged as "bill and keep." This approach removes any incentive for these companies to negotiate with smaller carriers and shifts the cost of that carrier's transport obligations to the rural ILEC.

Any responsibility of the rural ILEC for the delivery of local traffic to a competitive provider has to be viewed in the context of where that responsibility lies -- only for delivery to a technically feasible point within the existing network of the incumbent rural ILEC. To the extent that the competitive provider requests the use of a network arrangement of a third party carrier on the other side of the Interconnection Point, it is the competitive provider that has chosen this arrangement for the provisioning of transport and termination on its side of the Interconnection Point. Any costs or other responsibilities that arise for that arrangement become part of the competitive provider's transport and termination network for which it will receive reciprocal compensation from the rural ILEC pursuant to the terms of an interconnection agreement and FCC rules. It is imperative that the Commission confirms once again this basic interconnection principle. It is simply not reasonable to expect a small rural carrier to build or provide network services outside its traditional boundaries in order to accommodate the method used by a new entrant to construct its network.

CONCLUSION

The Commission should act to resolve the intercarrier compensation issues that have been so long unresolved and are adversely impacting this industry. This includes (1) elimination of the identical support rule for CETCs (2) clarification that interconnected Voice over Internet Protocol ("VoIP") traffic is subject to existing intercarrier

compensation requirements, (3) adoption of rules to address phantom traffic/access avoidance, (3) transitioning state access rates to interstate rate levels with an appropriate restructure mechanism for rate-of-return carriers, (4) tying any Subscriber Line Charge ("SLC") increases to a federal benchmark rate (5) using Universal Service Funds ("USF") in the deployment of broadband, and (6) reaffirming that rural ILECs are not obligated to transport traffic beyond their network.

CarolinaLink asks that the Commission be mindful its obligation to assure that rural carriers remain viable and are able to provide services to consumers who depend on them for quality services at affordable prices.

RESPECTIVELY SUBMITTED, this 22nd day of December 2008.

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